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IN THE

Supreme Court of the United States

October Term, 1964.

No. 426

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

Motion for Leave to File a Brief as Amici Curiae in Support of the Jurisdictional Statement of Henry Goldman and May Goldman.

and

Brief of Amici Curiae in Support of Jurisdictional Statement of Henry and May Goldman.

AUSTIN CLAPP,
CHARLES E. MCCLUNG,
611 South Catalina Street,
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Amici Curiae.

SUBJECT INDEX

Page

Motion for leave to file a brief as amici curiae in support of the jurisdictional statement of Henry Goldman and May Goldman 1

Brief of Amici Curiae in Support of Jurisdictional Statement of Henry and May Goldman 3

I.

Introductory statement 3

II.

Questions presented 4

III.

Argument 5

A. The provisions of the California Constitution and statutes which vest power in the city council of the City of Los Angeles to divert taxes from other taxing agencies located outside of the city in order to pay for the cost of a redevelopment Project within the city without the consent of the non-city taxing agencies constitutes taxation without representation in violation of the Fourteenth Amendment of the Constitution of the United States 5

B. Assuming arguendo that the legislature may delegate the authority to divert taxes to the Los Angeles City Council as a "state agency," this delegation of author-

Page

ity to a partisan agency not responsive to the will of all the people affected violates the Fourteenth Amendment to the Constitution of the United States 10

Conclusion 11

Appendix A. California statutes and constitutional provisions involved 5

TABLE OF AUTHORITIES CITED

Cases	Page
Agricultural Prorate Commission v. Superior Court, 5 Cal. 2d 550	11
Carter v. Carter Coal Company, 298 U. S. 238	10, 11
Gomillion v. Lightfoot, 364 U. S. 339	9
Kies v. Lowrey, 199 U. S. 233	9
Senior v. Braden, 295 U. S. 422	9
Stewart v. Kansas City, 239 U. S. 14	9
Sunshine Anthracite Coal Company v. Atkins, 310 U. S. 381	10
Miscellaneous	
Los Angeles County Taxpayers Guide for 1963, pp. 86-88	10
County and City Data Book, 1962 U. S. Department of Commerce, Bureau of the Census, 32, table 2, item 3	8
County and City Data Book, 1962 U. S. Department of Commerce, Bureau of the Census, p. 476, table 6	8
Statutes	
California Constitution, Art. XIII, Sec. 19	6
California Statutes of 1945, Chap. 1326, p. 2478	5
Health and Safety Code, Secs. 33950-33954	6
United States Code, Title 42, p. 1441	5
United States Constitution, Fourteenth Amendment	3, 7, 10, 11

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John Swigart, Robert T. McInerny, Janet McInerny Bekins (formerly Janet M. Morse) and the Briggs Apartment Hotel Company hereby respectfully move for leave to file a brief Amici Curiae in support of the Jurisdictional Statement filed by Henry Goldman and May Goldman in this case. The consent of the attorney for the appellants has been obtained. The consent of the attorneys for the appellee has been requested but has been refused.

The interest of the moving parties in this case arises from the fact that they are the owners of real property or interests therein located within the project boundaries of the proposed redevelopment project. Mr. Mc-

Inerny, Mrs. Bekins (formerly Mrs. Morse), and the Briggs Apartment Hotel Company were respondents to the *in rem* action filed in the California courts which gave rise ultimately to the decision of the Supreme Court of the State of California sought to be reviewed. Mr. Swigart is the son of Clara M. Swigart, now deceased, who was also a party respondent in those proceedings. The moving parties herein have been actively opposing the proposed redevelopment project for over nine years, and they will be vitally affected by the decision since their land is included in the project area.

The brief which the moving parties seek permission to file will be limited to the question of the constitutional validity of the California statutes relating to the financing of the redevelopment project. The moving parties are familiar with the arguments that will be made by the appellants and believe that the brief which they seek to file will contain a more complete argument on the above limited issue.

Respectfully submitted,

AUSTIN CLAPP,
CHARLES E. MCCLUNG,
Amici Curiae,

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Brief of Amici Curiae in Support of Jurisdictional Statement of Henry and May Goldman.

I.

INTRODUCTORY STATEMENT.

The appellants in this case contend that provisions of the California State Constitution and of the statutes of California relating to the financing of redevelopment projects violate the Fourteenth Amendment of the Constitution of the United States.

If the appellants are correct, the determination of the Federal question is of vital importance not only for the litigants but for virtually all the redevelopment projects in the State of California. If the financing provisions are invalid, thousands of property owners

and bond holders are directly affected. The ramifications of the invalidity of the California statutes are so far reaching that it is respectfully submitted that review should be granted to determine the Federal question involved.

II.

QUESTIONS PRESENTED.

A. May the State of California vest power in the City Council of the City of Los Angeles to divert taxes from other taxing agencies outside of the City in order to pay for the cost of a redevelopment project located within the territorial boundaries of the City without first obtaining the consent of the other non-City taxing agencies?

B. Assuming that the State may constitutionally vest power in the City Council to divert taxes from non-City taxing agencies without the consent of such agencies, may such a power be delegated to a partisan administrative body, to wit, ~~to~~ the members of the City Council of the City of Los Angeles who owe their office and allegiance to the people of the City and not to the constituents of the other taxing agencies?

III.

ARGUMENT.

A. The Provisions of the California Constitution and Statutes Which Vest Power in the City Council of the City of Los Angeles to Divert Taxes From Other Taxing Agencies Located Outside of the City in Order to Pay for the Cost of a Redevelopment Project Within the City Without the Consent of the Non-City Taxing Agencies Constitutes Taxation Without Representation in Violation of the Fourteenth Amendment of the Constitution of the United States.

Since the end of World War II, many states with financial assistance from the Federal Government have embarked upon enthusiastic urban renewal and redevelopment programs. The California Act was adopted in 1945. (Cal. Stats. 1945, c. 1326, p. 2478.) Since the entry of the Federal Government into this field, the extent of the participation of the Federal Government has essentially been limited to a contribution of two-thirds of the net project cost. See 42 U. S. C. 1441 *et seq.* In order to make the redevelopment programs attractive to the local taxpayers, the states have adopted various methods designed to "fund" the local share of the project cost.

The State of California attempted to solve this problem in a rather unique manner. In 1952 a constitutional amendment was adopted which authorized the Legislature to provide for the allocation of a portion of the *ad valorem* real property taxes in the project

area to the local redevelopment agency to pay for the costs of the project. (California Constitution, Art. XIII, Sec. 19. See Appendix "A".) Prior to the adoption of the constitutional amendment, the California Legislature adopted Sections 33950 through 33954 of the Health and Safety Code providing for the tax allocation. (See Appendix "A".) These legislative provisions were validated by the constitutional amendment.

Essentially the California statutes provide that the redevelopment plan may include a provision that if after its adoption the assessed value of the taxable property in the project area increases the taxes levied on such property are divided between the appropriate taxing agencies and the redevelopment agency. The other taxing agencies receive that portion of the taxes which would have resulted from the application of their current rate to the former assessed valuation, and the additional tax funds produced by the application of the tax rate to the increased valuation are paid to the redevelopment agency to repay indebtedness incurred in financing the project.

The redevelopment plan adopted by the City Council of the City of Los Angeles contains a provision for such tax allocation. At every stage of the proceedings in the California courts, the appellants have contended that the City of Los Angeles cannot divert tax funds from the non-City taxing agencies unless they first obtain the consent of these agencies. Unless the

statutes are construed to require such consent, appellants have contended that the Statutes violate the Fourteenth Amendment to the Constitution of the United States.[1]

The Supreme Court of the State of California has rejected the contentions of Mr. and Mrs. Goldman and has held the constitutional provision and the statutes enacted pursuant thereto to be valid. (See Appendix "B" to Appellants Jurisdictional Statement, pp. 73-76.) Thus, the California Supreme Court has held that under the law of the State of California the City Council of the City of Los Angeles may divert taxes from

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[1]The amended joint pre-trial statement read in part as follows:

"Section 33950 through 33954 of the California Health and Safety Code, which authorized the inclusion in the Final Plan of Section C.8.d. (1) and (2) providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopment, are void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made.

Sections C.8.d. (1) and (2) of the Final Plan provide for an illegal appropriation by the City Council of funds belonging to other taxing agencies in that they provide for such tax allocation without first requiring the City Council to obtain consent to such allocation from other taxing agencies." [C. T. 575.]

the County of Los Angeles (and other taxing agencies) to pay for a project located within the City of Los Angeles.

There are 6,038,771 people in the County of Los Angeles.[2] There are 2,470,015 people in the City of Los Angeles.[3] At least 3,559,656 people are not the constituents of the City Council of the City of Los Angeles. These people do not elect the City Councilmen and have no popular control over their actions. According to the opinion of the California Supreme Court, *ad valorem* real property taxes belonging to these 3,559,656 people can be diverted by the City to pay for a project located within the territorial boundaries of the City.

We suggest that the power to divert taxes is essentially identical to the power to tax in the first instance. Taxing agencies tax to fulfill the financial needs of Government, and any diversion of taxes requires that taxes elsewhere be increased to meet these needs.

We have been taught that the evil of taxation without representation is one of the principal reasons we chose to exist as a separate nation. No principle is more firmly embedded in our political philosophy. It is an axiom of constitutional law that a state may not tax real property physically located outside of its bor-

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[2]County and City Data Book, 1962, *U. S. Department of Commerce, Bureau of the Census,* page 32, table 2, item 3.

[3]*Ibid.,* page 476, table 6.

ders. (*Senior v. Braden,* 295 U. S. 422, 429.) We suggest that the universal acceptance of this precept is caused not so much by the acceptance of the Austinian concept of ultimate sovereignty as it is by the simple maxim that those who are to be taxed should have something to say about the imposition of the tax.

Whether a municipality may tax real property outside of its jurisdiction would seem to be a matter of first impression. We are not unaware of the numerous authorities holding that the state has plenary power over its municipalities. (*Stewart v. Kansas City,* 239 U. S. 14; *Kies v. Lowrey,* 199 U. S. 233.) But this plenary power is subject to certain limitations particularly when exercised to impair voting rights. (*cf.*, *Gomillion v. Lightfoot,* 364 U. S. 339.)

The respondents argued in the court below that under State law the City Council of the City of Los Angeles acts as a "State agency." But nomenclature must give way to reality. The City Council of the City of Los Angeles is elected by and acts for the people of the City, and they are empowered by State law to divert taxes belonging to 3,559,656 people located outside of the City. To suggest that the City Council is acting as a "State agency" and that these disenfranchised non-City taxpayers should seek relief in our State Capitol is patently illusory.

B. Assuming Arguendo That the Legislature May Delegate the Authority to Divert Taxes to the Los Angeles City Council as a "State Agency," This Delegation of Authority to a Partisan Agency Not Responsive to the Will of All the People Affected Violates the Fourteenth Amendment to the Constitution of the United States.

Members of the City Council of the City of Los Angeles are under oath to represent the best interests of the taxpayers of the City. They have a vested and partisan interest in the affairs of the City. It might be urged that they are duty bound to their constituents to utilize funds belonging to other non-City taxing agencies to the maximum extent possible in order to reduce the ultimate cost to the taxpayers of the City. It might be argued that to do otherwise would be in violation of their oath of office.

It is conceivable that a city which imposes no real property taxes could adopt a redevelopment plan within its territory and shift the entire cost to other non-city taxing agencies.[4]

This Court has held that the delegation of authority to a partisan and interested faction is arbitrary and results in the denial of rights safeguarded by the Fourteenth Amendment to the Constitution of the United States. (*Carter v. Carter Coal Company,* 298 U. S. 238, 311.) It is true that the *Carter* case has received a judicial battering. (*Sunshine Anthracite Coal Company v. Atkins,* 310 U. S. 381.) However, the

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[4]The Los Angeles County Taxpayers Guide for 1963, pages 86-88, indicates that there are twenty cities in Los Angeles County without any municipal tax rate, including such major cities as Palmdale, Duarte, Paramount, Temple City, Norwalk and La Puente.

principle of the *Carter* case that authority may not be delegated to a partisan agency was correct. Where the decision went astray was in the assumption that the Bituminous Coal Commission was a partisan agency.

The delegation of authority to an agency to regulate is perfectly proper. (*Agricultural Prorate Commission v. Superior Court,* 5 Cal. 2d 550) [delegation of authority to Agricultural Prorate Commission to regulate marketing conditions in the lemon industry upon petition filed by two-thirds of lemon growers affected held valid.] But could California empower the Agricultural Prorate Commission to regulate the growers of grapefruit and oranges at the request of and by petition filed by the lemon growers? Could Congress delegate to the Bituminous Coal Commission whose members are chosen largely by the coal industry power to regulate the steel industry or the automobile industry? The taxpayers of the County of Los Angeles have nothing whatever to say about the makeup of our Los Angeles City Council. To delegate to this Council the authority to make the determinations affecting the people of the County without the consent of the people of the county is in derogation of the Fourteenth Amendment to the Constitution of the United States.

Conclusion.

It is respectfully submitted that jurisdictional statement filed by Henry Goldman and May Goldman presents substantial Federal questions and should be given plenary review.

Respectfully submitted,

AUSTIN CLAPP,
CHARLES E. MCCLUNG,
Amici Curiae,

APPENDIX A.

California Statutes and Constitutional Provisions Involved.

ART. XIII, SECTION 19 OF THE CALIFORNIA CONSTITUTION

Sec. 19. All property in a redevelopment project established under the Community Redevelopment Law Act as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of such ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and such taxes (the word "taxes" as used herein shall include, but shall not be limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon such taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to

the effective date of such ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise included after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(b) That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph designated (a) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of

the respective taxing agencies as taxes on all other property are paid.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph designated (b) hereof may be irrevocably pledged for the payment of the principal of and interest on said loan, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

All of the provisions of the Community Redevelopment Law, as amended in 1951, which relate to the use or pledge of taxes or portions thereof as herein provided, or which, if effective, would carry out the provisions of this section or any part thereof, are hereby approved, legalized, ratified and validated and made fully and completely effective and operative upon the effective date of this amendment.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33950-33954*

§ 33950. *Division of taxes levied; allocation.* Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(1) *Portion of taxes based on last assessment roll before establishment of district.* That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise in-

*Renumbered in 1963 as 33670, 33671 and 33672, Section 33954 repealed.

cluded after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(2) *Portion of taxes in excess of amount.* That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph numbered (1) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

§ 33951. *Pledge of tax revenues for payment of principal and interest.* In any redevelopment plan or in

the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph numbered (2) of Section 33950 may be irrevocably pledged for the payment of the principal of and interest on said loans, advances, or indebtedness.

§ 33952. *Taxes defined.* As used in this article the word "taxes" shall include, but without limitation, all levies on an ad valorem basis upon land or real property.

§ 33953. *Taxation of property leased by agency.* Whenever property in any redevelopment project has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons or whenever the agency leases real property in any redevelopment project to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely upon the assessed value of his or its leasehold interest.

§ 33954. *Effective date of article; approval of constitutional amendment.* This article shall become operative only if the people approve the constitutional amendment of the 1951 Regular Session of the Legislature adding Section 19 to Article XIII of the Constitution of the State and in such case at the same time as such constitutional amendment takes effect.